

Presented By:



## In Discussion with A Law Firm Conflicts Expert (Podcast Transcript and Expanded Commentary)

On current conflicts trends, the pressures facing conflicts teams, the opportunity for innovation in staffing model and technology.

**Teddy Peck:** I'm very happy to welcome Scott Goodwin from Aurora North to the podcast today. He's here to talk about conflicts, risk, and compliance issues facing law firms, particularly given the shift to remote working and the other pressures and changes affecting the industry.

Scott, can you start by sharing with us some of what you're personally seeing at law firms on this front?

**Scott Goodwin:** Certainly. The key issues I'm seeing stem from growing regulatory and risk pressures. Part of that is driven by increasing business competition among firms. And part of that is tied to clients increasingly imposing strict Outside Counsel Guidelines on their law firms.

These factors can exacerbate the challenge of addressing both ethical and compliance requirements. Firms need to get work done and consistently get more and more work

and business in the door — and that dynamic can create more pressure on the conflicts process, for example.

At the same time, firms definitely intellectually understand the critical importance of effective risk management. That includes evaluating not only ethical risks, but reputational and financial risks. But there are tensions there as well.

**Teddy:** How are you seeing these pressures affect the operational teams managing conflicts and intake?

**Scott:** They're seeing a greater volume of request for conflicts searches. And in a lot of cases they just don't have the manpower to handle that. At the same time, there are firms that don't have trained lawyers on the conflicts team to review reports before they're circulated internally. That means they end up generating very long reports that can be time consuming for the practicing lawyers to review.

Longer reports can translate into greater chance that an issue is overlooked — there may be a true conflict lurking in the weeds of a number of false hits that are non-issues.

So the speed at which teams can act and the speed with which results are expected can actually come into conflict.

**Teddy:** What are the key things firms are doing to try to address these problems?

**Scott:** Technology is playing a big role. Law firms are using better software to make sure that they can check all the data points that they need to check. But getting there can be challenging, especially given the scope of searching:

- Firms might be checking multiple websites for corporate tree information.
- They might be do general research via web searches.
- They might be looking at in-house data from their financial system.
- They might have tribal knowledge, managed via spreadsheets, like a list of forbidden clients.

So we're seeing firms investing in updating or enhancing their conflicts software systems. A modern solution can integrate this data — aggregating, indexing and presenting it ways that make it all more digestible and actionable.

Another area we see firms focusing on is restructuring Conflicts teams. That function has evolved over the years. Many firms first relied on Records Department staff or the Library or Accounting teams to run and generate reports for review. That approach didn't involve extensive analysis. And those resources weren't always trained extensively as they might have been, or were expected to search every key detail as thoroughly as might be warranted.

At other firms, the policy may have had practicing lawyers evaluating reports and making calls on conflicts. Of course, that can create "mini" conflicts in terms of lawyers who are incented to take on new matters, also responsible for

clearing their own conflicts, and a tension tied to spending non-billable time on that review. Now, you can set prudent checks and balances — but even if lawyers don't self-clear conflicts, having processes that involved report review by practicing lawyers can create other overhead.

**Teddy:** Can you speak more about team restructuring? It sounds like it's because firms want lawyers focused on doing more "lawyer work"? Are there other drivers?

**Scott:** There is an element of risk management at play. Lawyers want to say "yes," they want the billable work and new clients. And they want to say "yes" quickly.

Now, I'm not saying they'd ever try to game the system or circumvent a true conflict for the sake of winning business. But the economic pressure everyone feels is very real.

I'd also note that not every lawyer has the same level of knowledge and training on conflicts. How much time in law school is spent mastering conflicts? There's some. But it might have been covered in a day, and the knowledge of every lawyer in the firm may not cover the latest developments, thinking, or decisions on the topic.

These are among the reasons why some firms invest in creating more rigorous conflicts approaches, increasingly organizing teams in a centralized model.

You can achieve greater standardization and efficiency with that model as well. So a dedicated team, structured with specialists analysts including lawyers, can add a lot of value. Not just in terms of increasing efficiency and freeing up billable lawyer time, but also in terms of mitigating risk and standardizing firm processes and policy compliance.

**Teddy:** What happens if things go wrong with conflicts?

**Scott:** Worst case scenario you could find yourself millions of dollars into a complex litigation matter and opposing counsel discovers the original conflict. If they act promptly and the issue is clear cut, you could be dismissed from the

engagement. That means you've wasted significant time, lost significant revenue, and suffered real reputational damage. That might impact your standing with potential clients and future business development prospects.

On that financial front you could also be on the hook for a malpractice claim from your original client, given the harm and burden they must bear in finding new counsel. And that ripples to things like insurance premiums and more.

There are consistent stories out there of this happening — though the ramifications vary based on whether it's a clear conflict that was ignored, an overlooked error, or some other arguable shade of gray at play. At the end of the day no firm wants to face any of those scenarios.

**Teddy:** You've identified at least four significant categories of risk exposure and real cost that firms face. Is there one of these that really stands out in the minds of firms?

**Scott:** I think they're all tied together. Reputation translates to the ability to do business and generate revenue. Firms take their professional goals seriously, but the bottom line is always in the picture.

**Teddy:** For firms that are now investing in their conflicts team and process, can you walk through what that journey tends to look like from your perspective?

**Scott:** I've had some recent conversations with firms that are moving from the legacy model I described earlier, which you might call ad hoc. They want to grow beyond a pure focus on resources who aren't professional analysts.

Typically that now involves hiring one or two lawyers as conflicts analysts — or that could take the form of moving a practicing associate into that new role.

Rather than wholesale, department-wide change, it's often incremental. Usually those resources start by taking on the duties of reviewing conflicts reports generated by their colleagues, and then helping to resolve potential issues.

That's a great first step, which helps shift the burden away from the billing lawyers, and brings the benefits I outlined earlier, in terms of cost savings and risk management.

The other area a firm will look at next is basically training the staff who did searching and reporting, to give them more of the skills to support some of the analysis and resolution elements of the process. Now I'm not saying you'd necessarily have someone in that role making hard judgment calls, or pursuing waivers and ethical walls, but there are improvements and efficiencies to be gained on that side of the equation for sure.

Part of that means making sure those resources understand firm policies and can consistently flag the clear-cut problem issues consistently — for example, when you have clearly adverse parties to current firm clients.

Another area where policy can help determine clear-cut decisions is when the time passed since a client became a former client — presuming that transition is clear cut. Many firms look to the statute of limitations on malpractice, which is seven years in most states. They'd reasonably clear a conflict with a former client past that point in time.

When you can have an analyst do that homework, you can short circuit the need for a lawyer to connect those policy dots and work through the resolution — a major savings in time. And as these types of skills and scenarios build, you find less work being put at the feet of billable lawyers.

There is a risk in these investments, of course. I recently read a report that the average tenure of a conflicts analyst may be just three or four years. So there is turnover to manage. But at the same time as more firms train more resources and adopt this type of approach, I suspect we'll see the continued growth of this role, as we have seen with other firm operational and support roles over time.

**Teddy:** Why do you think there is this turnover? Why are people leaving?

**Scott:** I think it's a combination of factors. The work can be high pressure, so you have to be comfortable in those types of environments. Sometimes it's also compensation concerns — even lateral movement of analysts among firms. I do think that investing in these roles can be hard for many firms. Management appreciates the need for risk and compliance roles, but it can be seen as overhead.

Another driver and issue is career growth. Many in this role reach a stage of competence or even mastery and wonder: “I review spreadsheets all day, what’s next?”

**Teddy:** How do you think firms can address these factors? Should the role be changed? Should the approach and structure of teams be modified even more?

**Scott:** Investment in technology can definitely make a difference. At first, it might scare people to hear that it reduces the number of bodies required to do the work. But, frankly, when effectively implemented, configured and managed, modern tools make the work itself much more rewarding and efficient, with a lot less pain and frustration.

Another area to consider for investment is firm culture. Conflicts can be kind of a thankless job. You get to say no to lawyers, which is never fun. And it can take time to get to that answer, which means keeping lawyers waiting.

I think educating the firm about the importance of the role of conflicts can go a long way to motivating that team. What they do is critical to the reputation of the firm and its ability to practice, grow and serve clients. Frame it that way and treat those managing the process under that umbrella, and the job can carry real weight and pride.

**Teddy:** I was speaking with expert recently who broke it down similarly. They said half of firms see conflicts as a blocker to business, and half see it as a benefit. And the challenge is how to get everyone to see it as a benefit.

Shifting gears, can you talk me about what you think risk specialists aren't talking about enough but should be much more focused on these days?

**Scott:** I think a key emerging area is Artificial Intelligence and intelligent use of data. We're now seeing technology with AI components to aid human review. That's not magic, at least not yet — you do have to train the system as to what should be identified as a conflict.

But it does work, and can really reduce the burden on conflicts in terms of having to manually review hits and result on reports to evaluate which are true conflicts or issues requiring greater review. I really think adoption of this approach and these AI tools is the future of conflicts.

**Teddy:** There's definitely a clear need and advantage to getting all of the right data into one place, accessible to the right people, with the right tools, to get the lawyers the right answers they need quickly.

**Scott,** thank you so much for taking the time to share your perspectives today. I always like to end these by asking our guests about something different than legal matters. Can you share anything interesting you're reading these days?

**Scott:** I haven't had so much time to read, but I've been quite into a podcast called [Floodlines](#) by Vann Newkirk from The Atlantic. It explores the build up to Hurricane Katrina in New Orleans and the various systemic reasons why the right preparations weren't in place.

**Teddy:** Well, I'll definitely add that to my queue. And hope to catch up with you again in the future. ♦



**Teddy Peck** is a national account manager for Accuity, serving North America. He's responsible for bringing on new law firm clients, enabling them to integrate comprehensive data, filtering engines, and reporting tools with their existing intake/conflicts systems — so they can effectively address AML, KYC, EDD and financial crime client screening requirements. **Contact:** [Teddy.Peck@accuity.com](mailto:Teddy.Peck@accuity.com)



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